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**BY HAND DELIVERY**

William F. Caton  
Acting Secretary  
Room 202  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, DC 20554

Re: Advanced Television Systems  
MM Docket No. 87-268

Dear Mr. Caton:

Transmitted herewith on behalf of Educational Broadcasting Corporation, licensee of noncommercial educational television station WNET, Newark, New Jersey, are an original and eleven copies of its Petition for Partial Reconsideration of the Sixth Report and Order in the above-referenced proceeding.

Respectfully submitted,

*Barbara K. Gardner*

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Enclosures

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**BEFORE THE**  
**Federal Communications Commission**  
**WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Advanced Television Systems	)	
and Their Impact upon the	)	MM Docket No. 87-268
Existing Television Broadcast	)	
Service	)	

**PETITION FOR PARTIAL RECONSIDERATION OF  
THE SIXTH REPORT AND ORDER**

Educational Broadcasting Corporation ("EBC"), licensee of noncommercial educational television station WNET, NTSC Channel 13, Newark, New Jersey, hereby seeks partial reconsideration of the Sixth Report and Order, FCC 97-115 released April 21, 1997, in the captioned proceeding ("Sixth R&O"). EBC, assigned DTV Channel 61 by the Sixth R&O, urges that if the Commission modifies the DTV Table of Allotments on reconsideration, public television stations should not be assigned non-core DTV channels, particularly where their collocation with commercial stations renders such an assignment unnecessary.

**INTRODUCTION**

Station WNET is the primary noncommercial educational television station in the nation's largest television market. Like most New York City and some northern New Jersey stations, WNET transmits from the World Trade Center. Although the station utilizes an NTSC

frequency allotted to Newark, New Jersey, the mandate of EBC's predecessor was, and EBC's mission remains, to provide a noncommercial educational and cultural program service to the entire New York City-northern New Jersey-Connecticut metropolitan area, as well as to make its programming available nationwide.<sup>1</sup> Despite shrinking and uncertain revenues, WNET has long been in the forefront of utilizing new technologies to carry out its educational mission,<sup>2</sup> and wishes to be an "early adopter" to bring digital television's benefits to the greatest possible number of viewers in the tri-state area. Regrettably, its DTV channel assignment, Channel 61, will greatly inhibit EBC's ability to do so.

**I. NONCOMMERCIAL STATIONS SHOULD NOT BE BURDENED WITH NON-CORE DTV ASSIGNMENTS, PARTICULARLY CHANNELS 60-69.**

As a noncommercial broadcaster, WNET will be particularly burdened by the assignment of Channel 61 as its digital television frequency. As shown below, the additional costs and diminished service area associated with this frequency make it a particularly inappropriate assignment for a public broadcaster.

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<sup>1</sup> NTA Television Broadcasting Corp., 44 F.C.C. 2563, 2564-65 (1961). WNET has produced such acclaimed PBS program series as Great Performances, Nature, The MacNeil/Lehrer NewsHour, American Masters, and Charlie Rose, as well as award-winning local programming such as CityArts.

<sup>2</sup> For example, WNET's Kravis Multimedia Educational Center develops educational products for the CD-ROM and DVD media, while its nationally-recognized Teacher Training Institute helps teachers of science and technology use television effectively in the classroom. In addition, WNET was among the earliest creators of a World Wide Web site intended to increase the impact of its on-air educational and cultural programming.

**A. Higher Costs**

Non-core channel assignments for public broadcasters, particularly at Channels 60-69, impose higher than average costs on those least able to afford them, including EBC. First and foremost, WNET and all similarly-situated public broadcasters will be required to construct two DTV facilities. WNET must build one facility on Channel 61, and then a second on its existing NTSC Channel 13 at the end of the transition period, since all NTSC and DTV operations will be relocated from Channels 60-69 at that time.<sup>3</sup> Clearly, the costs of such dual construction would be significant for any broadcaster, and are particularly onerous for a noncommercial licensee. Moreover, New York City presents particularly costly obstacles to new television construction.

Second, so long as it operates on Channel 61, WNET will experience extremely high electric power costs, given the inefficiency of high-frequency transmitters.

Finally, the probability of obtaining compensation by new users of Channels 60-69 for the expenses incurred in relocating DTV operations to core spectrum will be remote, since those channels' new users are expected to be public safety agencies rather than commercial entities.<sup>4</sup>

For all these reasons, EBC's Channel 61 allotment discourages, rather than promotes, early provision of valuable noncommercial DTV service in the nation's largest market. The Commission recently acknowledged "the financial difficulties affecting WNET in particular

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<sup>3</sup> Sixth R&O at 39 para. 80.

<sup>4</sup> Id. at 39 para. 79. To remedy this deficiency, WNET supports a "pooled" reimbursement concept, as described below.

and noncommercial educational broadcast stations in general . . . .”<sup>5</sup> It should act now to reduce such difficulties in the context of any corrections made to the DTV Table of Allotments.

**B. Diminished Service Area**

According to the Commission’s own calculations, the Channel 61 assignment will serve to decrease the number of persons who receive WNET’s premier noncommercial educational television service, while significantly increasing the coverage of collocated commercial broadcasters. WNET’s DTV/NTSC area match is only 94.3%; while 17,110,000 persons receive its Channel 13 NTSC service, only 17,043,000 will receive DTV service on Channel 61.<sup>6</sup> At the same time, collocated New York commercial television stations are expected to serve up to 1.247 million additional persons, and up to 4,600 additional square kilometers, with their DTV facilities.<sup>7</sup>

In addition, calculations WNET has conducted utilizing the NTIA standard Irregular Terrain Model (based on the Longley-Rice propagation model) indicate that significant NTSC interference to EBC’s DTV Channel 61 will occur in areas with substantial populations, including Long Island. This interference will be created primarily by co-channel Station WTIC-TV, Hartford, Connecticut, and secondarily by co-channel Station WTGI-TV, Wilmington,

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<sup>5</sup> Educational Broadcasting Corp., 11 FCC Rcd 3044 (1996).

<sup>6</sup> Sixth R&O at B-30.

<sup>7</sup> Id. at B-32. Indeed, seven of the eight World Trade Center tenants other than WNET (all of which operate commercially) will increase coverage on their assigned DTV channels. Id. at B-30, B-32, B-56.

Delaware, and by Station WACI, Channel 62, Atlantic City, New Jersey. The two co-channel stations are significantly short-spaced to WNET, based on the 217.3 kilometer UHF DTV-to-NTSC Zone I standard adopted in the Sixth R&O<sup>8</sup>: WTIC is only 148.1 kilometers from WNET's World Trade Center site, while WTGI is 157.2 kilometers from that site.<sup>9</sup>

For these reasons, any "fixes" made to the DTV Table of Allotments for the Northeast Corridor should incorporate a preference for assigning core DTV channels to noncommercial broadcasters and a penalty for assigning Channels 60 to 69 to such broadcasters, particularly in cases such as WNET's where collocation with commercial broadcasters makes non-interference-causing channel exchanges feasible.

**II. THE COMMISSION SHOULD IMMEDIATELY DETERMINE THAT CHANNEL RELOCATION EXPENSES WILL BE REIMBURSED FROM A COMMON POOL, AND THAT COLLOCATED STATIONS LICENSED TO DIFFERENT COMMUNITIES CAN READILY NEGOTIATE CHANNEL EXCHANGES.**

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Contrary to the Sixth R&O's proposal to address compensation for broadcasters forced to relocate from Channels 60-69 in a subsequent proceeding, the FCC should resolve this question in the present proceeding. Particularly for noncommercial licensees such as EBC who must construct two DTV facilities, the transition to DTV will impose severe financial burdens,

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<sup>8</sup> Sixth R&O at 98-99 para. 215, E-35-E-36 (47 C.F.R. § 73.623(d)).

<sup>9</sup> Although the Commission intends that these standards apply to new (not initial) DTV allotments, and acknowledges that the initial DTV Table of Allotments contains a number of nonconforming allotments, the short spacings present here are not de minimis.

and planning will be facilitated to the extent certainty as to compensation for relocation costs can be achieved in the near term.

In addition, because the new users of Channels 60-69 are likely to be public safety agencies unable to pay broadcasters' relocation costs, reimbursement for broadcasters vacating these frequencies should be received from nationally or locally-pooled funds derived from spectrum auctions, or from the successful commercial bidders for such spectrum. In this way, those stations such as WNET who are arbitrarily assigned DTV frequencies at Channels 60 to 69 will not be further prejudiced by such assignments.

Finally, negotiated channel exchanges should be permitted without rulemaking among stations that, while licensed to different communities and even different states, transmit from a common location, as do WNET (and certain other New Jersey stations) and most New York City licensees. To require such stations, particularly noncommercial licensees with limited resources, to undergo the expensive, time-consuming petition for rulemaking process in these circumstances is to exalt form over substance.

### **CONCLUSION**

In the Fifth Report and Order in this proceeding, the Commission reiterated its "commitment to noncommercial educational television service," its "recognition of the high quality programming service noncommercial stations have provided to American viewers over the years," and its acknowledgment of "the financial difficulties faced by noncommercial stations . . . ." The

Commission promised it would grant the special relief measures these stations "need and warrant . . . to assist them in the transition to DTV."<sup>10</sup>

It is not too soon for the Commission to begin to make good on this promise. For the reasons stated, the Commission should assign DTV channels within the core spectrum to all noncommercial broadcasters affected by changes now made to the DTV Table of Allotments; determine that broadcasters relocated from the core will be reimbursed from pooled funds; and permit negotiated channel exchanges without rulemaking among collocated broadcasters.

Respectfully submitted,

EDUCATIONAL BROADCASTING  
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June 13, 1997

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<sup>10</sup>

Fifth Report and Order, FCC 97-116 at 45 para.104 (1997).